



# **Contractor's Guide**

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Note: Many of the Minnesota Housing Forms referenced in this document can be located in the List of [Post Selection Materials for Owners and Developers](#) on Minnesota Housing’s website.

## **Chapter 1 - Overview**

The Contractor’s Guide provides assistance to Owners (Applicant/Developer/Borrower) and Contractors in understanding the Contractor’s role in the Minnesota Housing development process. Minnesota Housing’s development process consists of the following phases: Formal Application, Launch Meeting, Determining Feasibility, Loan Commitment, Loan Closing, Construction Phase, End of Construction, and Warranty Period.

Factors that may have an impact on the development process include:

- Minnesota Housing Construction Loan vs. End Loan.
- Minnesota Housing acting as non-Lead Lender vs. Lead Lender.

In addition, this guide contains information regarding reasonable compensation for construction related services and describes requirements associated with construction related insurance, Contractor surety, contract compliance, and the Owner-Contractor agreement.

The Contractor may be selected via negotiated bid or competitive bid process. The Contractor, if selected via negotiated bid, is more likely to play a more active role in the earlier stages of the development process.

Regardless of what stage in the development process the Contractor is selected, the Owner and successful Contractor shall become familiar with all of the information contained and/or referenced in this guide prior to executing the Owner-Contractor agreement.

Any submittals sent or delivered to Minnesota Housing shall be accompanied with a Transmittal Letter indicating name of development, date, enclosed materials, and action requested. All submittals shall be sent via USPS to the attention of the Minnesota Housing: Housing Development Officer (HDO) assigned to the development.

## Chapter 2 - Contractor Selection/Bidding Requirements/ Compensation

The construction process begins with bidding or negotiating contracts with those who will build the proposed site improvements. Minnesota Housing permits either direct selection (negotiated or comparative selection) or competitive bidding for awarding construction contracts. Each selection method has its advantages and disadvantages. Regardless of what selection method is used, selection of a Contractor (Single Prime General Contractor) who has the capabilities and qualifications to meet the project’s requirements is the Owner’s responsibility.

Construction Management, Construction Coordination, Owner Construction Representative Services, or other similar services in addition to or outside the Single Prime General Contractor construction contract shall not be considered construction costs. The costs or fees for said additional services, if approved by Minnesota Housing, shall be included in the Developer Fee or some other development cost determined by Minnesota Housing.

Minnesota Housing realizes the importance of Contractors receiving adequate compensation for constructing services. In addition, Minnesota Housing realizes not every project is the same, and there are often projects that are inherently complicated and characterized by uncertainties. Therefore, Contractor compensation may exceed the maximum percentage allowed (see below), if approved by Minnesota Housing.

### 2.01 Purpose

To provide a framework for Contractor selection.

### 2.02 Requirements

1. If Contractor selection is through direct selection:
  - a. It shall be done early in the development process to establish the Contractor as part of the design team, and the Contractor shall be expected to provide continuous value engineering in design.
  - b. All work shall be competitively bid to at least two (2) qualified subcontractors for each division of work, including work to be performed by the General Contractor’s own workforce.
2. Contractor compensation shall comply with the following:
  - a. Contractor Profit: The maximum Contractor profit is 6% of net construction costs. (**Note:** Net construction costs are construction costs not including Contractor profit, general requirements, and Contractor overhead.)
  - b. General Requirements: Items of costs to be considered in this allowance include: onsite supervision, construction site signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, cleanup

costs, rubbish removal, watchmen wages, all of the builder’s insurance (except builder’s risk), temporary walkways, fences, roads and other similar expenses.

- c. Contractor Overhead: Minnesota Housing allows a Contractor an overhead allowance based on a percentage of the net construction cost. Preconstruction Services and Cost Estimating shall be considered Contractor Overhead. The permitted maximum allowance is 2%.
  - d. It is possible to exceed expenses in one area if other areas are not at their maximum. Minnesota Housing will allow the collective balance of Contractor profit, general requirements, and Contractor overhead to equal 14%.
  - e. Developer as Contractor: When the Developer and the Contractor are the same entity, in addition to the fee limits stated above, the combined sum of Developer fee, Contractor profit, Contractor overhead, and General Requirements may not exceed 20% of the total development costs, less the Developer fee.
  - f. Extra Expenses due to unique weather conditions such as Winter Heat, Frost Stripping, Construction Dehumidification, or De-watering may be in addition to the Profit, General Conditions, and Overhead, if approved by Minnesota Housing.
- 3. If Contractor selection is through competitive bidding:
    - a. Bidding may be open to all or restricted to a few Contractors: (3-5 is recommended).
    - b. Minnesota Housing prefers soliciting competitive bids from a selected list of Contractors who are judged to be qualified for a specific job.
  - 4. Regardless of what Contractor selection method is used, Contractor compensation shall be in the form of a fixed price (stipulated sum). Refer to the Owner-Contractor Agreement section for information regarding acceptable forms of agreements.
  - 5. If the project is federally funded:
    - a. Davis Bacon and Related Acts (DBRA) may be triggered with federally funded projects. Please confirm with the owner, and/or the owner’s Architect if the project has triggered DBRA requirements. If the project has triggered DBRA, please confirm that the required DBRA documents are included in the bid package before it is released for bidding.
    - b. Section 3 and Women or Minority Owned Business Compliance is required for federally funded projects. The Section 3 Guide and all Attachments must be included in the bid package.

## **Chapter 3 - Insurance Requirements**

Please visit [insurance requirements](#) for the Minnesota Housing Insurance Requirements.

## **Chapter 4 - Owner-Contractor Agreement**

Once the Owner and Contractor agree upon the scope of the Contract Documents and associated costs to perform the work, an agreement is prepared between the Owner and Contractor (Single Prime General Contractor). Prior to being executed, the Owner-Contractor Agreement shall be submitted to Minnesota Housing for review and approval.

### **4.01 Purpose**

The Agreement reflects the goals and needs of the Owner and Contractor as established in the Contract Documents. It states the contract sum and its basis, describes the work, specifies the time of commencement and completion, and provides for payment to the Contractor. It also includes other provisions and incorporates by reference a number of other documents related to the work and makes them part of the contract.

### **4.02 Requirements**

1. The Owner-Contractor Agreement shall be the American Institute of Architects (AIA) “A101-2007 Stipulated Sum Agreement,” or another industry standard form of agreement approved by Minnesota Housing, that when fully completed and executed, is acceptable to Minnesota Housing in form and substance.
2. The “AIA Document A201-2007, General Conditions of the Contract for Construction” shall accompany the Owner-Contractor Agreement. This may be done by reference. Any modifications or extension of the general conditions shall be via supplementary conditions.
3. The Owner-Contractor Agreement must state the date of commencement of the work and the date the Contractor shall achieve substantial completion of the entire work.
4. The Owner-Contractor Agreement must stipulate a contract sum (lump sum) the Owner shall pay the Contractor for the Contractor’s performance of the contract and all alternates, if any, and/or unit prices, if any, the contract sum is based upon.
5. Minnesota Housing permits one progress payment per month. The amount of time needed to process each progress payment will vary depending on many variables including funding characteristics. Minnesota Housing strives to minimize processing time for each progress payment. The Owner and Contractor shall agree on a reasonable time for processing progress payments that is acceptable to Minnesota Housing and other funders. Normally 30 days.
6. The Owner-Contractor Agreement shall require 10% retainage be withheld from each progress payment for work completed and materials presently stored. A provision for possible reduction or limitation of retainage may be included in the Agreement. It shall state as follows: “If agreed by Owner and Minnesota Housing at 50% completion (by dollar volume), further retainage may cease resulting in retainage equal to 5% of the contract sum upon completion of the contract.”



7. The Owner-Contractor Agreement shall reference all specifications contained in project manual, drawings, addenda (if any), and any other documents forming part of the Contract Documents.
8. If Davis Bacon and Related Acts (DBRA) are triggered, the Owner-Contractor Agreement must contain the locked in wage decision, HUD 4010, the contractor signed Section 3 Clause and Minnesota Housing’s Equal Employment Opportunity Policy Statement forms. Please confirm with Minnesota Housing that the correct forms are included in the Contract before it is executed.

## **Chapter 5 – Contractor’s Surety**

Contractor’s surety is required for most new construction and/or rehabilitation type projects requiring disbursement of Minnesota Housing loan proceeds during the construction phase (Construction Loan). The Contractor’s surety shall be in the form of payment and performance bond acceptable to Minnesota Housing. Minnesota Housing may permit a Completion Assurance Fund (either letter of credit or cash) in lieu of bonds, if there is an identity of interest and if bonding is not possible.

### **5.01 Purpose**

Ensures there will be sufficient funds to complete the work and that all Sub-Contractors will be paid under their sub-contracts.

### **5.02 Requirements**

The following Contractor’s surety requirements must be complied with:

1. Contractor’s surety acceptable to Minnesota Housing is required whenever Minnesota Housing loan is a Construction Loan. Minnesota Housing typically does not require Contractor’s surety if the entire Minnesota Housing loan is withheld until End of Construction (End Loan).
2. Contractor’s surety shall be on Minnesota Housing’s form of Payment and Performance Bonds unless otherwise approved by Minnesota Housing.
3. Prior to Loan Commitment, the Contractor (Single Prime General Contractor) must submit to Minnesota Housing evidence (draft copy of Minnesota Housing form of bonds or letter from surety company) that Payment and Performance Bonds (dual obligee) in amounts equal to 100% of the construction contract sum can be obtained.
4. If due to reasons acceptable to Minnesota Housing, the Contractor is unable to obtain 100% bonding, the Contractor may be required to supply a Completion Assurance Fund (unconditional irrevocable letter of credit acceptable to Minnesota Housing or cash) in an amount to be set by Minnesota Housing (normally 25% of the construction contract sum) in lieu of Payment and Performance Bonds. Minnesota Housing, before accepting any Completion Assurance Fund, will require a Completion and Payment Assurance Agreement (as prepared by the Minnesota Housing) to be executed. The Completion and Payment Assurance Agreement establishes terms and conditions applicable to the effective Completion Assurance Fund issued to Minnesota Housing. If cash is substituted for a letter of credit, Minnesota Housing is not required to pay any interest on the cash portion of the Completion Assurance Fund.
5. The cost of Payment and Performance Bonds may be included in the construction contract sum unless specifically directed otherwise. 100% payment reimbursement for Payment and Performance Bonds is allowed at the first pay draw if this cost is itemized separately on the Application for Payment and Schedule of Values.

## Chapter 6 – Contractor’s Role Overview

It is important for the Contractor to understand its role in Minnesota Housing’s development process, which is divided into the following stages:

1. Formal Application
2. Launch Meeting
3. Determining Feasibility
4. Loan Commitment
5. Loan Closing
6. Construction Phase
7. End of Construction
8. Warranty Period

If the Contractor is selected during the earlier stages of the development process, the processing stages and Contractor’s submissions generally relate as follows. **Note:** All Contractor submissions listed for a particular processing stage must be received and approved by Minnesota Housing prior to proceeding to the next processing stage.

Processing Stage	Architecture Submissions
1. Formal Application	<ul style="list-style-type: none"> <li>• Qualifications of Contractor (Minnesota Housing Form 209A)</li> </ul>
2. Launch Meeting	<ul style="list-style-type: none"> <li>• Estimate of project costs</li> </ul>
3. Determining Feasibility	<ul style="list-style-type: none"> <li>• Refined estimate of project costs</li> <li>• EEO Policy Statement (Minnesota Housing Form)</li> </ul>
4. Loan Commitment	<ul style="list-style-type: none"> <li>• Final Contractor’s Cost Breakdown (AIA Form G703)</li> <li>• Evidence of bonding</li> <li>• Contract Compliance Activity Report (Minnesota Housing Form)</li> <li>• AIA Owner-Contractor Agreement (Draft)</li> <li>• Draft building permit(s)</li> <li>• Evidence of insurance</li> <li>• Contractor’s Commitment (Minnesota Housing Form 214)</li> <li>• For federally funded projects, complete Davis Bacon and Related Acts (DBRA), including pulling the applicable wage decision and Section 3 and Women or Minority Owned Business Compliance requirements, if applicable</li> <li>• Section 3 and Women or Minority Owned Business Compliance is required and shall be included for Minnesota Housing Federally funded projects</li> </ul>
5. Loan Closing	<ul style="list-style-type: none"> <li>• AIA Owner-Contractor Agreement (Executed)</li> <li>• Final building permit(s)</li> <li>• Initial certified application for payment (If applicable)</li> <li>• Payment and Performance Bonds (Executed)</li> <li>• Assignment of Construction Contract (Minnesota Housing Form)</li> <li>• Supplement to General Conditions of The Agreement Between Owner and Contractor (Minnesota Housing Form)</li> <li>• Sworn Construction Statement (if End Loan) (AIA G702/G703)</li> </ul>

	<ul style="list-style-type: none"> <li>• DBRA, if applicable</li> <li>• Section 3 and Women or Minority Owned Business Compliance is required and shall be included for Minnesota Housing Federally funded projects</li> </ul>
6. Construction Phase	<ul style="list-style-type: none"> <li>• Certified applications for payment</li> <li>• Administer On-site Construction Meetings</li> <li>• DBRA reporting, if applicable</li> <li>• Prepare and Disseminate Construction Meeting Minutes</li> <li>• Change Order documentation</li> </ul>
7. End of Construction	<ul style="list-style-type: none"> <li>• Certificate of Substantial Completion (Typically initiated by Architect of Record)</li> <li>• Certificate of Occupancy (If applicable)</li> <li>• As-built survey (If applicable)</li> <li>• Record drawings (If applicable)</li> <li>• O&amp;M/Warranty manuals</li> <li>• Intended Method of Meeting the (Enterprise Green Communities) Criteria Form or Enterprise Certification</li> <li>• List of any uncompleted work items (If applicable)</li> <li>• Contractor’s cost certification (AIA G702/ G703) (If applicable)</li> <li>• Finalize DBRA reporting, if applicable</li> </ul>
8. Warranty Period	<ul style="list-style-type: none"> <li>• Warranty correction verification</li> </ul>

If the Contractor is selected during the later stages of the development process, the Qualifications of Contractor (Minnesota Housing Form 209A) shall be submitted as well as any other Contractor submissions from previous processing stages as determined necessary by Minnesota Housing.

## **Chapter 7 - Formal Application**

The Minnesota Housing Multifamily Division currently offers two processes for Owners to request funding: the Consolidated Request for Proposals (RFP) and Open Pipeline. Refer to Minnesota Housing’s Application Guide for more information regarding applying for multifamily resources.

If selected at time of Formal Application, the Contractor (Single Prime General Contractor) will likely be requested by the Applicant to assist with preparing materials necessary for Formal Application.

### **7.01 Purpose**

The Formal Application provides information needed to evaluate proposals and determine if funding program resources are eligible for proposed use.

### **7.02 Contractor’s Role**

The Contractor’s role during this stage generally consists of:

1. Conduct a site visit and assist Applicant in formulating a preliminary estimate of construction costs.
2. If rehabilitation, assist the Owner and/or Architect of Record in preparing a preliminary work scope.
3. If new construction, provide basic value engineering input on Schematic Design concept options.
4. Complete the Qualifications of Contractor (Minnesota Housing Form 209A).
5. Assist the Applicant with completing Minnesota Housing’s Multifamily Application Form.
6. Participate in the development of Green Communities Criteria strategies and documentation.

### **7.03 Acceptance for Processing**

Once the development has been selected for processing, the Owner will be notified and a Launch Meeting will be scheduled.

## **Chapter 8 - Launch Meeting**

Based upon Owner notification of Minnesota Housing acceptance for processing, Minnesota Housing’s Housing Development Officer (HDO) schedules the Launch Meeting shortly after the development has been selected for processing. Members of the development team are normally required to be present. The Contractor (Single Prime General Contractor) is welcome to attend this meeting.

At least four days in advance of the Launch Meeting, the Owner and/or Architect of Record shall submit to the Minnesota Housing HDO the following items: Schematic Design documents; and, if available: site survey, subsurface exploration report, environmental assessments, and energy audit (if applicable).

### **8.01 Purpose**

The purpose of the Launch Meeting is to allow the development team to present its specific proposal to Minnesota Housing, exchange ideas, identify shared goals, and allow Minnesota Housing Staff to explain requirements and policies pertaining to the particular development. Topics of discussion will include: Minnesota Housing underwriting process, characteristics of the site, site control, zoning issues, alternative design concepts, improvement costs, maintenance and operating expenses, market concerns, unit mix, affirmative action, equal employment requirements, characteristics of the loan, characteristics and capacity of the development team, Minnesota Housing design review process, procurement of construction, any unique aspects, and next steps.

### **8.02 Contractor’s Role**

If the Contractor attends the Launch Meeting, its role generally consists of:

1. If rehabilitation, becoming familiar with proposed work scope and commenting on scale and scope of improvements.
2. If new construction, reviewing schematic design documents and developing preliminary construction cost estimate.
3. Visiting the site and being prepared to discuss any specific site issues having an impact on construction and/or construction costs.
4. Discussing results and the need for any further analysis/assessment resulting from available Phase I or Phase II Environmental Assessments, geotechnical exploration, an energy audit (if applicable), and
  - a. Discussing approach to procuring construction, which includes:
  - b. Contractor qualifications
  - c. Contractor’s role in the development process
  - d. Contractor compensation

- e. Construction bidding and negotiation
- f. Contractor surety
- g. Contractor insurance
- h. Owner-Contractor agreement
- i. Contract compliance and Equal Employment Opportunity (EEO) requirements
- j. Davis-Bacon wage rates (if applicable)
- k. Contractor’s cost certification (if HUD Risk Share or Identity of Interest)
- l. Construction Loan vs. End Loan
- m. Minnesota Housing Forms: Assignment of Construction Contract and Supplement to General Conditions of Agreement between Owner and Contractor (both are typically required if construction loan).

Throughout the development process, additional working sessions involving the development team and Minnesota Housing staff may be required to resolve outstanding issues, if they arise.

## **Chapter 9 - Determining Feasibility**

Following the approval of Schematic Design, the Architect of Record will normally prepare Design Development documents consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, civil, structural, mechanical and electrical systems and such other elements as may be appropriate. These Design Development documents shall be forwarded to the Contractor (Single Prime General Contractor), if selected, for review.

### **9.01 Purpose**

To determine if the development is viable and can move toward loan commitment.

### **9.02 Contractor’s Role**

If the Owner has identified a Contractor by this time, the Contractor’s role typically consists of:

1. If rehabilitation, review refined work scope and update estimate of site improvement costs.
2. If new construction, review Design Development documents, provide value engineering, and refine and update estimate of site improvement costs.
3. Submit to Minnesota Housing for review and approval Contractor’s EEO Policy Statement (Minnesota Housing Form).
4. Review the following information (normally provided by the Owner), if applicable, and assist the Owner and/or Architect of Record in finding solutions to any obstacles:
  - a. Geotechnical Exploration Report
  - b. Environmental Assessment(s)
  - c. Energy Audit (If requested by Minnesota Housing)
  - d. Boundary and Topographic Survey

During the Design Development review phase, revisions and modifications may be necessary to arrive at a Design Development that meets Minnesota Housing requirements, development team expectations, and budget limitations. Again, additional working sessions involving the development team may be required.



## Chapter 10 - Loan Commitment

Throughout the Loan Commitment phase, major features of the Contract Documents will begin to be finalized including architectural drawings and specifications. In addition, the construction process begins with bidding or negotiating a contract with the potential Contractor. Once identified, the Contractor (Single Prime General Contractor) may begin to review working drawings and specifications prior to their completion to confirm that the work scope is in line with previous cost estimates.

Once working drawings and specifications have been completed and approved by the development team and Minnesota Housing, they shall be transformed into Contract Documents and forwarded to Contractor(s) for bid proposals.

### 10.01 Purpose

The Loan Commitment establishes the legal requirements and other conditions for the Loan Closing.

### 10.02 Contractor’s Role

Whether or not the bid was negotiated or competitive, the successful Contractor’s role leading up to Loan Commitment normally is as follows:

1. Receive complete Contract Documents and provide a firm bid for completing the work (site improvements) in accordance with the requirements of the Contract Documents.
2. Understand bidding requirements such as: Davis-Bacon, contract compliance, Section 3 and Women or Minority Owned Business, Equal Employment Opportunity (EEO), bonding, etc.
3. Complete and/or submit the following items to Minnesota Housing for review and approval:
  - a. Qualifications of Contractor (Minnesota Housing Form 209A) - unless previously submitted and approved
  - b. Schedule of values form (AIA G702/703)
  - c. Contract Compliance Activity Report (Minnesota Housing Form)
  - d. AIA 101-1997 Owner-Contractor lump sum agreement (draft form)
  - e. Contractor’s evidence of insurance
  - f. Contractor’s Commitment (Minnesota Housing Form 214)
  - g. Evidence building permit(s) are ready to be issued upon payment
  - h. Contractor’s evidence of bonding (draft copy using Minnesota Housing form of bonds)
1. Review/execute any other submission that may be required by any other lender.

2. Become familiar with the following Minnesota Housing required documents, if applicable:
  - a. Assignment of Construction Contract
  - b. Supplement to General Conditions of the Agreement between Owner and Contractor

## Chapter 11 - Loan Closing

The Loan Closing is the process by which loan documents and/or other legal documents are executed by the Owner Contractor, Minnesota Housing, and possibly other Lenders. The Loan Closing occurs before any loan proceeds are disbursed and typically before any work is started. It is based upon approval of loan documents, legal documents, 100% Contract Documents, and award of the construction contract to a successful Contractor (Single Prime General Contractor).

At the time of the Loan Closing, Minnesota Housing secures a favorable opinion of counsel for the Owner as to the requirements of the Minnesota Housing Loan Commitment and Building Loan Agreement, and, upon recording of the loan documents, the Title Insurance Policy insuring Minnesota Housing’s interest as Mortgagee. In addition, all development financing must be in place prior to or concurrent with the Loan Closing.

If loan disbursement is needed during the construction phase (Construction Loan), the General Partner(s) (Owner), Owner’s Attorney, General Contractor, Architect of Record, Surety Representative, Title Insurance Representative, and Processing Agent (if applicable) must attend the Loan Closing.

If loan disbursement is not needed until after construction is completed (End Loan), the Loan Closing typically occurs after all site improvements are completed. The Contractor is normally not required to attend.

If Minnesota Housing is Lead Lender, the Loan Closing will normally take place at Minnesota Housing. Following Loan Closing, funds are disbursed in accordance with the Building Loan Agreement and Master Disbursement Agreement executed at Loan Closing.

### 11.01 Purpose

The Loan Closing typically places funding needed for construction and/or rehabilitation in effect so draw disbursements can be made during the Construction Phase or after construction is completed.

### 11.02 Contractor’s Role

1. The Contractor’s role leading up to Loan Closing typically is as follows:
  - a. If Construction Loan, furnish to Minnesota Housing for review and approval the following items:
    - i. Executed copy of approved AIA Owner-Contractor agreement.
    - ii. Issued copy of final building permit(s) along with paid receipt.
    - iii. Contractor’s first application for payment (AIA Document G702 and G703), along with any necessary invoices for backup purposes. (Architect

of Record must certify Contractor’s application for payment.) The contractor’s first pay application at closing shall be limited to building permit/plan review fees, performance and payment bonds, builder’s risk insurance, and other costs approved by Minnesota Housing. Other general conditions, mobilization, overhead, profit, preconstruction services, or other such costs shall not be included in the first pay draw at closing.

b. If End Loan:

- i. Complete site improvements according to contract documents approved by Minnesota Housing.
- ii. Schedule and conduct a site inspection/walk through with Minnesota Housing Staff Architect assigned to the development, if requested by Minnesota Housing.
- iii. Obtain and forward to Minnesota Housing a copy of Certificate(s) of Substantial Completion, Certificate(s) of Occupancy, and any other documents/information as determined necessary by Minnesota Housing prior to Loan Closing.
- iv. Identify any remaining site improvements yet to be completed (punch list) including any alleged nonconforming items. (Minnesota Housing will typically require 1.5 times the estimated value for such items to be withheld, at time of Loan Closing from the Contractor, until all items are completed and verified.) Minnesota Housing reserves the right to require all punch list and/or alleged nonconforming items to be completed and/or corrected prior to Loan Closing.
- v. Submit to Minnesota Housing for review and approval AIA G702/G703 and Certification of General Contractor.

2. The Contractor’s role at Loan Closing typically is as follows:

a. If Construction Loan:

- i. Attend Loan Closing.
- ii. Execute Minnesota Housing Forms: Assignment of Construction Contract, Supplement to General Conditions of the Agreement Between Owner and Contractor, and Form of Payment and Performance bonds.
- iii. Initial the final Contract Documents, including plans and specifications, as requested by Minnesota Housing.
- iv. Participate in a pre-construction conference (typically held at time of Loan Closing) to discuss draw schedule and procedures.

b. If End Loan, Contractor participation is normally not required.

## Chapter 12 - Construction Phase

Once funding has been secured to pay for work as required by the contract documents and a Notice to Proceed has been issued by the Owner, construction work may commence. During the Construction Phase, the Contractor is responsible for the supervision required to assemble materials and perform labor to achieve project completion in accordance with the approved contract documents.

If Minnesota Housing funding is needed for any loan disbursement during the Construction Phase (Construction Loan), a Loan Closing must take place prior to commencing any work. A brief Pre-Construction Meeting is normally held during or immediately following the Loan Closing. If Minnesota Housing funding is not needed for any loan disbursement until after construction is completed (End Loan), the Loan Closing does not typically take place until after construction is completed. Whether or not the loan was a Construction Loan or an End Loan, Minnesota Housing shall be periodically permitted to enter the site to inspect the work.

It is essential that the project be constructed in accordance with the approved contract documents. Minnesota Housing’s “Supplement to General Condition of the Agreement between Owner and Contractor,” as executed by the Contractor and Owner whenever Minnesota Housing is acting as Coordinating Lender and loan disbursement is needed during the Construction Phase, gives Minnesota Housing the right to enter the site and inspect the work. These visits may be announced or unannounced and are at the sole discretion of Minnesota Housing. If at any time during the construction of the project, in the sole opinion of Minnesota Housing, the Contractor has failed to perform the work under the contract documents in accordance with the contract documents or has failed to utilize materials in accordance with the contract documents, Minnesota Housing may issue a Correction Order to the Contractor for correction of such items. This can be done without the approval of the Owner.

If an End Loan and, in the sole opinion of Minnesota Housing, the Contractor has failed to perform the work under the contract documents in accordance with the contract documents, or has failed to utilize materials in accordance with the contract documents, Minnesota Housing may elect not to close on the loan. This could be for an indefinite period of time or until all nonconforming items are satisfactorily corrected .

### 12.01 Purpose

The Construction Phase brings the bid documents and previous stages of the Minnesota Housing development process to realization as site improvements are completed in accordance with the contract documents.

### 12.02 Contractor’s Role

The Contractor’s role during the Construction Phase generally consists of the following:

1. Attend a Pre-Construction Meeting. The purpose of the Pre-Construction Meeting is to establish procedures to be followed during the Construction Phase of the development. It shall be attended by the Owner, Architect of Record, Contractor, Minnesota Housing Staff Architect and Labor Standards Officer, if applicable. Topics normally discussed include:
  - a. Monthly draw meeting schedule.
  - b. Construction draw procedure.
  - c. Handling requests for changes.
  - d. Temporary project sign.
  - e. Davis Bacon and Related Acts (DBRA), if applicable.
2. Administer On-site Construction Meetings:
  - a. Every two weeks is preferred, however, at least once a month in conjunction with monthly draw meeting is a required.
  - b. Prepare and disseminate Construction Meeting minutes.
3. Call for the Architect of Record’s review and approval of shop drawings, product data, samples, and mock-ups.
4. Provide supervision required to assemble materials and performing labor to achieve a completed project.
5. Study and follow the contract documents and laws and regulations affecting construction, and cooperating with the Architect of Record and other contractors and subcontractors to the extent necessary to accomplish the work.
6. Select the means, methods, techniques, sequences, and safety procedures for coordinating and constructing the work on time and within budget.
7. Administer construction tests and inspections.
8. Prepare Contractor’s Application and Certificate for Payment (AIA Documents G702 and G703).
9. Pay for all the labor, materials, equipment, utilities, and services necessary to accomplish the work.
10. Fulfill all contractual responsibilities for permits, bonds, certificates, and other written notices, authorizations, approvals, objections, and submittals.
11. Submit Request For Information (RFI) to Architect of Record whenever documents are not clear in their requirements.
12. Construction Contract Modifications:
  - a. Wait for approval before executing any design or material modifications.

- b. When significant design or material modifications occur that affect the construction cost and/or when extension of the contract time is justified, the Architect of Record shall prepare a Change Order (AIA Document G701).
  - c. All Change Orders must include a detailed material and labor quantity and cost itemization (normally prepared by the Contractor) showing how adjustments to contract sum were determined.
  - d. Change Orders must be approved by the Owner, Contractor, Architect of Record, and the Minnesota Housing Staff Architect.
  - e. General contractor markup on all change order work, whether it’s their own self performed work or work by their subcontractors, shall not be greater than 14%.
13. Notify Minnesota Housing immediately in the event of Owner default.
14. Initiate project closeout process, which typically includes the following:
- a. Provide a list of incomplete items (punch list) including monetary value of each.
  - b. Notify Owner of any changes in insurance coverage.
  - c. Submit all warranties, maintenance contracts, and required operating instructions.
  - d. Show compliance of with all legal construction requirements and inspections as required for certificate of occupancy.
  - e. Submit record documents showing recorded changes made during construction to drawings, specifications, addenda, etc.
  - f. Deliver replacement and maintenance stock of material if specified.
  - g. Complete keying schedule, make final changes to lock cylinders, and coordinate shifting responsibility for security to the Owner.
  - h. Instruct the Owner in the operation and maintenance of systems and equipment.
  - i. Thoroughly clean construction debris from all site areas.
  - j. Restore damaged finishes.
  - k. Submit the required guarantees and certificates of inspection.
  - l. Obtain certificate(s) of occupancy from the local municipality, if applicable.
  - m. Request Architect of Record’s inspection for substantial completion.
15. Perform any additional duties associated with completing the work as required by the contract documents.
16. Minnesota Housing’s “Certificate of General Contractor” shall be completed and submitted.

Once the Architect of Record inspects the work and judges it to be substantially complete in accordance with contract documents, the End of Construction processing stage begins.



## Chapter 13 - End of Construction

Once the Architect of Record has determined the work is substantially complete and has issued a Certificate of Substantial Completion (AIA Document G704), the Contractor shall work diligently to satisfy all remaining contractual obligations, including completing and/or correcting any remaining punch list items. The Contractor shall not request the Architect’s final inspection and a final certificate for payment until they are confident everything is in order including any Correction Orders issued by the Minnesota Housing. The Minnesota Housing Staff Architect typically visits the site to inspect the work around this time.

Regardless if loan disbursement is needed during the Construction Phase (Construction Loan) or if loan disbursement is not needed until after construction is completed (End Loan), it is important that all site improvements are constructed in accordance with the approved contract documents.

If portions of the work cannot be completed for some time after the work is determined substantially complete and the project status cannot remain open, Minnesota Housing may approve disbursement of funds for uncompleted work (normally 1.5 times the estimated value) into an escrow account governed by terms of an agreed upon escrow agreement. Funds shall be withheld until all work is complete and all terms of the escrow agreement are satisfied.

The Contractor is required to submit a certificate of actual costs in a form acceptable to Minnesota Housing whenever:

1. Minnesota Housing’s loan has or is going to be submitted to the United States Department of Housing and Urban Development (HUD) for insurance under HUD’s Housing Finance Agency Risk-Sharing Program and there is an identity of interest between the Owner and Contractor. Such cost certification must be audited by an independent public accountant in accordance with requirements established by HUD; or
2. Minnesota Housing’s loan is an End Loan.

### 13.01 Purpose

To mark completion of the project. This typically involves taking the project from the point of substantial completion to final completion and payment of the Contractor. This is often referred to as project closeout.

### 13.02 Contractor’s Role

The Contractor’s role during the End of Construction processing stage generally consists of the following:

1. Execute the Certificate of Substantial Completion prepared by the Architect.
2. Complete the work called for by the contract, including all punch list items and any Corrections Orders issued by Minnesota Housing.

3. If rehab, provide evidence that all permits are closed out.
4. Obtain final certificate(s) of occupancy (if applicable).
5. Request the Architect’s final inspection of the work and a final application for payment.
6. Provide an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the owner might in any way be responsible, have been paid or otherwise satisfied.
7. Provide certification of actual costs to Minnesota Housing when applicable (see above).
8. Provide consent of surety to the final payment when applicable.
9. Provide all closeout information for Davis Bacon and Related Acts (DBRA) and Section 3 and Women or Minority Owned Business Compliance, if applicable.
10. Execute and forwarding to the Owner, compliance and documentation as per Minnesota Housing Rental Housing Design/ Construction Standards, Chapter 8 – Sustainable Housing Requirements.
11. Provide final O&M Manuals, Occupant Manual and Homeowner and New Resident Orientation.
12. Perform any other duties associated with the project closeout process as required by the Owner and Contractor Agreement.

Once the Architect of Record issues the Contractor’s final certificate for payment, it typically marks the end of the End of Construction phase. If an as-built survey is required after the work is completed, Minnesota Housing may withhold final payment to the contractor until the as-built survey is completed and Minnesota Housing is satisfied with the results.

At approximately 11 months following the date of substantial completion, a warranty inspection may be required involving the Contractor. Refer to the Warranty Period of the development process.

## **Chapter 14 - Warranty Period**

The Warranty Period includes the requirements associated with the AIA General Conditions of the Contract for Construction requiring the Contractor to correct defective work within one year after the date of substantial completion, statutory warranties providing protection mechanisms against faulty workmanship and defective materials beyond the one-year correction period, and any manufacturer warranties. The Warranty Period generally starts on the date of substantial completion for those portions of the work covered by that Certificate of Substantial Completion and remains in effect until all warranties expire.

### **14.01 Purpose**

To ensure building elements perform at expected levels during the Warranty Period.

### **14.02 Contractor’s Role**

The Contractor’s role during the Warranty Period generally consists of the following:

1. Before the correction period expires, participate in an Eleventh Month review with the Owner (or Owner’s Representative) and Architect (if applicable) to determine if there are any problems associated with performance of specified materials, systems, and equipment, and secure any needed repairs or replacements as follows:
  - a. If any problem has resulted from failure in a material or system required by the construction documents, correct such defects or deficiencies per instructions from the Architect of Architect and/or Owner; or
  - b. If any problem has resulted from improper operation or maintenance of equipment, observe and advise Owner on proper operations and maintenance measures.
2. After the correction period expires, correct any ongoing defect if it’s determined to be due to noncompliance with building standards as promulgated by statutory warranties.
3. Perform any other duties associated with the project’s Warranty Period as required by the Owner-Contractor Agreement.